



IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1979

No. [REDACTED]

78-1893

JANICE McLEAN BIRELINE,

Petitioner,

vs.

DR. L. W. SEAGONDOLLAR, et al.,

Respondents.

* * * * *
ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE FOURTH CIRCUIT
* * * * *

SUPPLEMENT TO PETITION
FOR WRIT OF CERTIORARI

* * * * *

Thomas L. Barringer
Barringer & Howard
305 First Federal Building
Raleigh, N. C. 27602

Norman B. Smith
Smith, Patterson, Follin,
Curtis, James & Harkavy
704 Southeastern Building
Greensboro, N. C. 27401

Counsel for Petitioner

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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1979

No. 78-1983

JANICE McLEAN BIRELINE,

Petitioner,

vs.

DR. L. W. SEAGONDOLLAR, et al.,

Respondents.

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ON WRIT OF CERTIORARI TO THE UNITED STATES
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SUPPLEMENT TO PETITION
FOR WRIT OF CERTIORARI

* * * * *

The petitioner by her attorney respectfully submits this supplement to her petition for writ of certiorari filed on June 21, 1979, and herewith sets forth those facts known and believed to be true which warrant allowance for late filings and in consideration of the aforesaid petition.

STATEMENT OF FACTS

I.

This cause was first heard before the United States District Court in Wilmington, North Carolina, on August 13, 1976. On that date, motion for summary judgment was granted as to all defendants. The cause was heard upon appeal before the United States Court of Appeals for the Fourth Circuit and an opinion was rendered therefrom on December 12, 1977, affirming the district court decision. A petition for rehearing en banc was denied by the Court of Appeals for the Fourth Circuit on January 24, 1978.

II.

On April 14, 1978, and within the 90-day time required for filing a petition for certiorari under 28 U.S.C. §2101(c), petitioner, by her counsel, filed a petition for a writ of certiorari in the United States Supreme Court in accordance with the rules thereof by depositing the same in the United States mail, properly addressed, with sufficient postage, and in sufficient copies as required by the Rules of the Court. (See affidavit of Norman B. Smith, North Carolina Civil Liberties Union Legal Foundation, Inc., Greensboro, N. C., attached hereto as Exhibit A).

III.

All defendants in this action represented by the Attorney General of the state of North Carolina were given due and timely notice of this appeal and were properly served with copies of the petition as required by law and the Rules of the Court (See affidavit of Edwin M. Speas, Jr., Special Deputy Attorney General of the state of North Carolina, attached hereto as Exhibit B).

IV.

Thereafter and to this time, none of the parties nor counsel therefor have been made aware of any action by the United States Supreme Court as regards this matter nor of any deficiency in complying with the requirements of law or the Rules of the Supreme Court.

V.

By telephonic investigation to the office of the Clerk of the United States Supreme Court on June 7, 1979, it was first learned that the office had no record of receipt of the aforesaid petition.

SUPPLEMENTAL REASONS FOR GRANTING THE WRIT

1. Petitioner has substantially complied with all requirements of law and Rules of the Court and is totally without fault in the apparent loss of the original petition which necessitates this supplemental petition.

2. The petitioner has exhausted all other remedies and in the interests of justice should be allowed to be heard on the merits of the case.

3. The original action, the appeal, and the petition for writ of certiorari are grounded in violation of 42 U.S.C.A. §1983 and raise significant constitutional and statutory issues heretofore unanswered by the United States Supreme Court.

4. The issues raised on appeal and in the said petition are all questions of obvious national importance fully warranting review and resolution by the Supreme Court.

CONCLUSION

For all the foregoing reasons, a writ of certiorari should issue to review the

judgment of the Fourth Circuit Court of Appeals in this proceeding.

Respectfully submitted,

Thomas L. Barringer *by NBL*
Thomas L. Barringer
Barringer and Howard
305 First Federal Building
Raleigh, N. C. 27602
Telephone: 919-833-2983

Norman B. Smith
Norman B. Smith
Smith, Patterson, Follin,
Curtis, James & Harkavy
704 Southeastern Building
Greensboro, N. C. 27401
Telephone: 919-274-2992

EXHIBIT A
IN THE SUPREME COURT OF THE UNITED STATES

October Term

No. _____

JANICE McLEAN BIRELINE,

Petitioner,

vs.

DR. L. W. SEAGONDOLLAR, et al.,

Respondents.

* * * * *
ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE FOURTH CIRCUIT
* * * * *

AFFIDAVIT OF ATTORNEY

Norman B. Smith, being first duly
sworn, deposes and says:

1. My name is Norman B. Smith, and
I am General Counsel of the North Carolina
Civil Liberties Union Legal Foundation,
Inc., the sponsor of this certiorari pro-
ceeding.

2. Forty copies of the petition for writ of certiorari, a check payable to the Clerk of the Supreme Court of the United States in the amount of \$100.00, and a certificate of service on opposing counsel of three copies of the petition, all were mailed to the Clerk of the Supreme Court of the United States through the United States Postal Service, using prepaid, first-class postage, on April 14, 1978. Attached hereto are true copies of the letter of transmittal and the certificate of service.

3. The petition for certiorari was sent to the Clerk of the Supreme Court in timely fashion, since 90 days from the denial of petition for rehearing by the court of appeals did not expire until April 24, 1978.

4. At all times from April 14, 1978, to June 6, 1979, the undersigned and counsel for petitioner were under the impression that the petition for writ of certiorari had been timely filed with the Clerk of the Supreme Court. On June 6, counsel for petitioner called the clerk's office and ascertained that there is no record that the petition had ever been filed.

/s/ Norman B. Smith
Affiant

Sworn and subscribed to
before me this 14 day
of June, 1979.

/s/ Patricia B. Williamson
Notary Public

My Commission Expires:

2/1/81

April 14, 1978

Clerk of the Supreme Court
of the United States
Washington, D. C.

RE: Janice McLean Bireline v.
Dr. L. W. Seagondollar, et al.

Dear Sir:

Enclosed are 40 copies of the Petition for Writ of Certiorari in the above case. A check for \$100.00 to pay the docketing fee and the certificate of service are also enclosed. Please docket this petition.

Yours sincerely,

/s/ Norman B. Smith

Norman B. Smith

NBS/gt

Enclosures.

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1977

No. _____

Janice McLean Bireline,

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v.

Dr. L. W. Seagondollar, et al.,

Respondents.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

CERTIFICATE OF SERVICE

I, Thomas L. Barringer, attorney for petitioner in the above-entitled proceeding, hereby certify that I served three copies of the Petition for Writ of Certiorari on counsel of record for respondent, Jack Cozort, by placing said copies in an envelope with first-class postage affixed, and by depositing the envelope in a United States Post Office in Greensboro, North Carolina, on the 14 day of April, 1978,

the addressee being within five hundred miles of place of mailing, addressed as follows:

Mr. Jack Cozort
Associate Attorney General
Department of Justice
Raleigh, North Carolina

/s/ Thomas L. Barringer
Thomas L. Barringer

EXHIBIT B

STATE OF NORTH CAROLINA

COUNTY OF WAKE

AFFIDAVIT

BEFORE ME the undersigned authority on this date personally appeared Edwin M. Speas, Jr., who, being duly sworn by me on his oath states:

I, Edwin M. Speas, Jr., Special Deputy Attorney General for the State of North Carolina and as counsel for defendants named herein give the following statement concerning the matter of Janice Bireline vs. Dr. L. W. Seagondollar, et al: As prescribed in 28 U.S.C. Section 1201(c) and within ninety (90) days of the Judgment of the Fourth Circuit Court of Appeals in this matter, counsel for petitioner duly served upon this office copies of Petitions to the U. S. Supreme Court for a grant of Writ of Certiorari. Content of said Petitions for a Writ of Certiorari were sufficient and complete enough to comport with all due process requirements for notice to the defendants in this case as to the basis of appeal.

/s/ E. M. Speas, Jr.

Edwin M. Speas, Jr.
Special Deputy Attorney
General for the State of
North Carolina

Sworn to and subscribed
before me this 14th day
of June, 1979.

/s/ Peggy C. Yoder

Notary Public

My Commission Expires:

October 16, 1983